

ASSEMBLY BILL

No. 518

Introduced by Assembly Members Yamada and Blumenfield

February 20, 2013

An act to add Article 7 (commencing with Section 14590.10) to Chapter 8.7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 518, as introduced, Yamada. Community-based adult services.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which health care services are provided to qualified, low-income persons. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. Existing law provides, to the extent permitted by federal law, that adult day health care (ADHC) be excluded from coverage under the Medi-Cal program.

This bill would establish the Community-Based Adult Services (CBAS) program, as specified, as a Medi-Cal benefit. The bill would require CBAS providers to meet specified requirements and would require the department to, commencing July 1, 2015, only certify and enroll new CBAS providers that are exempt from taxation as a nonprofit entity.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California supports the right for all to live in the most
4 integrated and community-based setting appropriate, and to be
5 free from unnecessary institutionalization.

6 (b) California's adult day services have experienced significant
7 instability in recent years due to substantial policy reforms and
8 budget reductions.

9 (c) For many years, Adult Day Health Care (ADHC) was a state
10 plan optional benefit of the Medi-Cal program, offering seniors
11 and adults with significant disabilities and medical needs an
12 integrated medical and social services model of care that helped
13 these individuals continue to live outside of nursing homes or other
14 institutions.

15 (d) At its peak in 2004, over 360 adult day health care centers
16 provided care to over 40,000 medically fragile Californians.

17 (e) The Budget Act of 2011 and the related trailer bill, Chapter
18 3 of the Statutes of 2011, eliminated ADHC as a Medi-Cal benefit.
19 As codified in Article 6 (commencing with Section 14589) of
20 Chapter 8.7 of Part 3 of Division 9 of the Welfare and Institutions
21 Code, the Legislature's intent in supporting the elimination of
22 ADHC was that it would be replaced by a smaller, less costly, yet
23 very similar, program. The Legislature sent Assembly Bill 96 of
24 the 2011–12 Regular Session to the Governor to create such a
25 program and the Governor vetoed the bill.

26 (f) Advocacy organizations sued the state, in *Darling v. Douglas*,
27 which was resolved through a legal settlement (Case No.
28 C-09-03798 SBA, United States District Court, Northern District
29 of California), which is the basis for the existing CommunityBased
30 Adult Services (CBAS) program, a smaller, less costly version of
31 ADHC.

32 (g) Adult day services and CBAS programs remain a source of
33 necessary skilled nursing, therapeutic, personal care, supervision,
34 health monitoring, and caregiver support.

35 (h) The changes forecast in the state's demographics demonstrate
36 a rapidly aging population, at least through the year 2050, thereby
37 increasing the need and demand for integrated, community-based
38 services.

1 (i) A well-defined and well-regulated system of CBAS is
2 essential in order to meet the rapidly changing needs of California’s
3 diverse and aging population.

4 (j) Codifying the Darling v. Douglas settlement agreement
5 principles will ensure that thousands of disabled and frail
6 Californians who relied upon adult day health programs and are
7 eligible for CBAS will be able to remain independent and free of
8 institutionalization for as long as possible.

9 SEC. 2. Article 7 (commencing with Section 14590.10) is
10 added to Chapter 8.7 of Part 3 of Division 9 of the Welfare and
11 Institutions Code, to read:

12
13 Article 7. Community-Based Adult Services

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15 14590.10. It is the intent of the Legislature in enacting this
16 article and related provisions to provide for the development of
17 policies and programs that continue to accomplish all of the
18 following:

19 (a) Ensure that elderly persons and adults with disabilities are
20 not institutionalized inappropriately or prematurely.

21 (b) Provide a viable alternative to institutionalization for those
22 elderly persons and adults with disabilities who are capable of
23 living at home with the aid of appropriate health care or
24 rehabilitative and social services.

25 (c) Promote adult day health options, including
26 Community-Based Adult Services (CBAS), that will be easily
27 accessible to economically disadvantaged elderly persons and
28 adults with disabilities, and that will provide outpatient health,
29 rehabilitative, and social services necessary to permit the
30 participants to maintain personal independence and lead meaningful
31 lives.

32 (d) Ensure that all laws, regulations, and procedures governing
33 CBAS are enforced equitably regardless of organizational
34 sponsorship and that all program flexibility provisions are
35 administered equitably.

36 (e) Ensure programmatic standards are codified to offer certainty
37 to providers and regulators.

38 (f) Compliance with the Special Terms and Conditions of
39 California’s Bridge to Reform Section 1115(a) Medicaid
40 Demonstration (11-W-00193/9) and provisions of the Darling v.

1 Douglas settlement agreement, including, but not limited to, all of
2 the following:

3 (1) Processes and criteria to determine eligibility for receiving
4 CBAS.

5 (2) Processes and criteria to reauthorize eligibility for CBAS.

6 (3) Utilization of the CBAS assessment tool.

7 (4) Provisions relating to enrollee due process.

8 (5) Requirements that plans contract with CBAS providers and
9 pay providers at the prevailing Medi-Cal fee-for-service rate.

10 (6) Appeals and other state and federal protections.

11 (7) Aid-paid-pending that provides for payment of services
12 during any appeal process, and CBAS provider qualifications.

13 14590.11. For purposes of this article, all of the following terms
14 shall have the following meanings:

15 (a) “Community-Based Adult Services” or “CBAS” means an
16 outpatient, facility-based program that delivers nutrition services,
17 professional nursing care, therapeutic activities, facilitated
18 participation in group or individual activities, social services,
19 personal care services and, when specified in the individual plan
20 of care, physical therapy, occupational therapy, speech therapy,
21 behavioral health services, registered dietician services, and
22 transportation.

23 (b) “Darling v. Douglas settlement agreement” means the
24 settlement agreement entered into under Darling v. Douglas, Case
25 No. C-09-03798 SBA, United States District Court, Northern
26 District of California.

27 (c) “Department” means the State Department of Health Care
28 Services.

29 14590.12. Notwithstanding the operational period of CBAS
30 as specified in the Special Terms and Conditions of California’s
31 Bridge to Reform Section 1115(a) Medicaid Demonstration
32 (11-W-00192/9), and notwithstanding the duration of the Darling
33 v. Douglas settlement agreement, CBAS shall be a Medi-Cal
34 benefit.

35 14590.13. An individual shall be eligible for CBAS if he or
36 she meets one of the following criteria, as specified in the Darling
37 v. Douglas settlement agreement:

38 (a) Meets nursing facility-A (NF-A) level-of-care criteria or
39 above.

1 (b) Has been diagnosed by a physician as having an organic,
2 acquired or traumatic brain injury, or a chronic mental illness, and
3 requires assistance or supervision in activities and instrumental
4 activities of daily living.

5 (c) Has a moderate to severe cognitive disorder such as dementia
6 or Alzheimer’s disease.

7 (d) Has mild cognitive impairment or moderate Alzheimer’s
8 disease or other dementia and requires assistance or supervision
9 with activities and instrumental activities of daily living.

10 (e) Has a developmental disability that meets the definition of
11 a substantial disability as described in Section 54001(a) of Title
12 17 of the California Code of Regulations.

13 (f) Meets criteria as established by Article 2 (commencing with
14 Section 14525).

15 14590.14. (a) CBAS shall be provided and available at licensed
16 Adult Day Health Care centers that are certified by the department
17 as CBAS providers and shall be provided pursuant to a participant’s
18 Individualized Plan of Care, as developed by the center’s
19 multidisciplinary team.

20 (b) In counties that have implemented managed care, CBAS
21 shall only be available to eligible individuals enrolled in Medi-Cal
22 managed care pursuant to Section 14186.3, except as follows:

23 (1) In counties that have not implemented managed care, CBAS
24 shall be provided as a fee-for-service benefit to all eligible
25 enrollees.

26 (2) For individuals who qualify for CBAS, but do not qualify
27 for, or who have been exempted from, managed care, CBAS shall
28 be provided as a fee-for-service benefit.

29 14590.15. All Medi-Cal managed care plans shall, at a
30 minimum, comply with all of the requirements in the Darling v.
31 Douglas settlement agreement, including, but not limited to the
32 following:

33 (a) Authorize the number of days of service of CBAS to be
34 provided at the same amount and duration as would have otherwise
35 been authorized and provided in Medi-Cal on a fee-for-service
36 basis. For beneficiaries receiving services on a fee-for-service
37 basis as authorized by the department on or before June 30, 2012,
38 the plan shall not reduce or otherwise limit the services without
39 conducting a face-to-face evaluation.

1 (b) Contract with any willing CBAS provider in the plan's
2 service area at no less than the prevailing Medi-Cal fee-for-service
3 rates to provide CBAS. Plans shall include all contracting CBAS
4 providers in its enrollee information material. This subdivision
5 shall not prevent a plan from paying CBAS providers above the
6 prevailing Medi-Cal fee-for-service rates.

7 (c) Meet on a regular basis with CBAS providers and member
8 representatives on CBAS issues, including the service authorization
9 process and provider payments.

10 14590.16. (a) CBAS providers shall meet all applicable
11 licensing, Medi-Cal, and waiver program standards, including, but
12 not limited to, licensing provisions in Division 2 (commencing
13 with Section 1200) of the Health and Safety Code, including
14 Chapter 3.3 (commencing with Section 1570) of Division 2 of the
15 Health and Safety Code, and shall provide services in accordance
16 with Chapter 10 (commencing with Section 78001) of Division 5
17 of Title 22 of the California Code of Regulations.

18 (b) CBAS providers shall be enrolled as Medi-Cal waiver
19 providers and shall meet the standards specified in this chapter
20 and Chapter 5 (commencing with Section 54001) of Division 3 of
21 Title 22 of the California Code of Regulations.

22 14590.17. Commencing July 1, 2015, the department shall
23 only certify and enroll new CBAS providers that are exempt from
24 taxation under Section 501(c)(3) of the Internal Revenue Code.

25 14590.18. On or before March 1, 2014, and after consultation
26 with providers and consumer representatives, all Medi-Cal
27 managed care plans shall develop and publish an implementation
28 plan that describes the processes and criteria to determine member
29 eligibility for receiving CBAS and reauthorization of services and
30 the criteria for determining the number of days of service to be
31 provided. In no instance shall a plan make eligibility for services
32 more restrictive or administratively burdensome than the terms of
33 the Darling v. Douglas settlement agreement.

34 14590.19. On or before July 1, 2014, and after consultation
35 with CBAS providers, managed care plans, consumers, and
36 consumer representatives, the department shall submit to
37 appropriate legislative budget and policy committees for review
38 and comment a quality assurance proposal, which shall specify
39 how the department will address quality assurance in the CBAS
40 program under managed care.

1 14590.20. Unless otherwise specified, in the event of a conflict
2 between any provision of this article and the Special Terms and
3 Conditions of California's Bridge to Reform Section 1115(a)
4 Medicaid Demonstration (11-W-00193/9), the Special Terms and
5 Conditions shall control.

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